2. A railway company, in regulating the speed of its trains, must consider the dryness of the season, the strength and direction of the wind, the danger to adjacent property, and the surrounding circumstances which increase the danger from fire thrown out by the engines; and a high rate of speed, when taken in connection with the circumstances, may be negligence.

3. Where, in an action against a railway company for the destruction of property by fire set by sparks from an engine, it was shown that a freight train too heavily loaded for one engine was drawn by two engines at double the speed of the schedule time and up a grade, that the engines emitted an unusual quantity of sparks, that the property destroyed was exposed to danger by reason of its nearness to the track, the dryness of the season, and the strong wind blowing directly to it from the passing engines, and it was not shown that the speed adopted, in view of the prevailing conditions, was a necessity to the railway service or a duty owed by the company to its patrons or the public, the question whether the company was guilty of actionable negligence was for the jury.

STEVENSON v. LEVINSON.

March 9, 1905.

[49 S. E. 974.]

APPEAL AND ERROR—RECORD—NEW TRIAL.

It cannot be held that the court erred in granting a new trial, a ground of the motion therefor being misdirection of the jury, and the instructions not being in the record.

INTERSTATE COAL AND IRON CO. v. COMMONWEALTH.

March 9, 1905.

[49 S. E. 974.]

TAXATION—MINERAL LANDS—ASSESSMENT AS UNDER IMPROVEMENT.

Under Laws 1902-04, p. 320, c. 217, providing for the assessment every two years of mineral lands at their fair cash value: First, of such portion of each tract which is improved and under development; second, of the improvements, fixtures, and machinery on each tract; and, third, the area and fair cash value of such portion of each tract as shall not be under development—the portion of a tract underlaid with coal is to be assessed as under improvement, where coal mines have been opened on it, and not such portion merely as will be deprived of coal within the next two years.

CHADDUCK v. BURKE.

March 9, 1905.

[49 S. E. 976.]

PUBLIC OFFICERS—APPOINTMENT—POWER OF COURTS—STATUTORY PROVISIONS—VACANCIES—HOLDING OVER AFTER EXPIRATION OF TERM.

1. A court has no inherent power to appoint to office, and a statute conferring the power must be strictly pursued.

2. Under Acts 1902-04, page 742, c. 482, sec. 95 [Va. Code 1904, p. 59], which provides that each county judge shall, on the recommendation of the board of supervisors, appoint a superintendent of the poor, and which declares that the judge may reject the recommendation, and, unless the board recommends another person within 30 days, he shall fill the office by his own appointment, an appointment by a judge, made in the same order which rejects a recommendation of the board, is void.

3. Acts 1902-04, p. 745, c. 482, sec. 106 [Va. Code 1904, p. 62], which provides that when a vacancy occurs in any county office the same shall be filled by the court or judge thereof, has reference alone to vacancies occurring during the term of an office by death, resignation, removal, and the like, and does not contemplate the filling of an office for the ensuing term on the expiration of the preceding term, where the incumbent holds the office for a fixed term and until his successor has qualified.

4. A circuit court has no authority, under Act December 18, 1903, as amended by Act March 15, 1904 [Va. Code 1904, p. 59, sec. 95], which provides that each circuit court, on a recommendation of the board of supervisors, shall in November, 1907, and every fourth year thereafter, or at any time before or after November, 1907, in case a vacancy exists, appoint a superintendent of the poor, to appoint before November, 1907, a superintendent of the poor to succeed the incumbent holding over after the expiration of his term ending January 1, 1904.

VIRGINIA IRON, COAL AND COKE CO. v. ROBERTS et al.

March 9, 1905.

[49 S. E. 984.]

JUDGMENTS — PERSONS CONCLUDED — PURCHASERS PENDENTE LITE — SCOPE OF ADJUDICATION—ESTOPPEL—CONCEALMENT OF TITLE—PARTITION—FINALITY OF DECREE—LIEN FOR COSTS—ENFORCEMENT.

1. A defect in a bill, in failing to sufficiently allege the facts relied on as fraudulent, does not justify sustaining a demurrer to the bill, where other allegations thereof sufficiently set forth an estoppel against defendants.

2. Acts of defendants in inducing others to purchase land which had previously been conveyed to defendants themselves estop them to claim any rights under their deed to the prejudice of those whom they induced to purchase, or those claiming under them, where the purchasers acted in good faith, relying on defendants' acts, without notice or knowledge of the conveyance to defendants.

[ED. NOTE.—For cases in point, see vol. 19, Cent. Dig. Estoppel, sec. 232.]

3. Where a bill was demurred to on specific grounds, its failure to expressly allege the majority of defendants against whom an estoppel was sought to be raised, which was not stated as one of the grounds of demurrer, was not available to sustain the demurrer on appeal.

4. In 1879 A. and others instituted suit for the specific performance of a contract for the sale of land to them, and for the confirmation of a partition between themselves. The relief sought was obtained, but before the report of partition